

**ARIZONA SUPREME COURT
RULE 123 AND DATA DISSEMINATION
ADVISORY COMMITTEE**

MINUTES

Tuesday, August 26, 2008

MEMBERS PRESENT:

Dave Byers
Michael Jeanes
David Bodney
Janna Day
Donald Jacobson
Patricia Noland
Rachelle Resnick
Patricia Sallen (telephonically)
James Scorza
Terry Stewart
Karen Westover

GUESTS PRESENT:

Jennifer Greene
Rich Robertson
Mark Jensen
Daniel Romm
Regina Kaupanger
Therese L. Martin
Nancy Swetnam
Diane Stubbs
Enric Volante

MEMBERS ABSENT:

Catherine O'Grady
Honorable Peter B. Swann
Honorable John S. Taylor

STAFF:

Melinda Hardman
Tama Reily

I. CALL TO ORDER

The August 26, 2008 meeting of the Rule 123 & Data Dissemination Advisory Committee was called to order by Michael Jeanes, Chair, at 10:00 a.m.

II. APPROVAL OF MINUTES

The minutes from the July 22, 2008 meeting of the Rule 123 & Data Dissemination Advisory Committee were presented for approval.

Motion: To approve the minutes from the July 22, 2008 meeting of the Rule 123 &

Data Dissemination Advisory Committee as presented. Approved unanimously.

III. ROUNDTABLE DISCUSSION

Proposal for Remote Electronic Access to Civil & Criminal Case Records

Changes that were made to the proposal since the last meeting were reviewed by the committee. Discussion included the following comments:

- The absence of the word “data” in the definition of “case record” raises a question. The committee previously agreed that “record” would be defined to include both documents and data, however, “data” is not used in this proposal. After discussion, consensus was to add the phrase “in paper or electronic format” to the definition of the term “case record.”
- Members agreed that all Opinions of the appellate courts must be made available to anyone, without registering, except that any Appendix to an Opinion in a criminal case in which a minor child is alleged to be the victim, shall not be provided by remote electronic access.
- Docket information should be provided in all case types unless otherwise restricted by rule or law.
- Section B should be simplified to say, for example, “the court will provide remote electronic access to case records under the following conditions...” and then define the levels of access in sections 1, 2, and 3.
- To make these access provisions work effectively, judges will need to receive additional training on compliance with Supreme Court Rule 125.
- Where 2(a)(viii) sets forth the requirement that the prosecuting agency shall “advise the clerk that the case is subject to this provision,” there is a question of whether this notice requirement should also be placed in the civil and criminal rules, as opposed to appearing in Rule 123, only. The committee agreed that the requirement of the prosecuting agency to advise the clerk that the case is one in which a minor child is alleged to be the victim of sexual assault should also be added to the civil and criminal rules, and the report should note this recommendation.
- Extended discussion on the registration process for remote electronic access ensued. Comments centered on:
 - Whether the registrations process should be different for the general public, attorneys, and parties.
 - Online versus phone registration.
 - The process by which a court would assign user names and passwords.
 - In-state attorneys registering with their bar number and whether out-of-state attorneys should be issued an Arizona bar number.

- It was suggested that the details of the registration process should not be included in the Rule, but that the Rule should refer to “guidelines” that would be established by the Arizona Judicial Council (AJC). This way, the guidelines could be changed more easily. An Appendix to the report could contain the details of what this committee has worked on to date on these issues.
- Extended discussion regarding fees for remote electronic access. Discussion included the following concerns:
 - Upon what should the fee be based?
 - Should there be a charge per document?
 - What about a variance in fees from county to county?
 - Should the fee be based upon the frequency of use?

After lengthy discussion on registration and fees, Mr. Jeanes suggested that a workgroup be formed to review all the aspects of these issues. Several members agreed to participate on this workgroup, including Patti Noland, Terry Stewart, and Dave Byers. Michael Jeanes noted that someone from his staff will participate as well. Members of the AJC Commission on Technology or its subcommittees should also be asked to participate. This workgroup’s recommendations should be completed by May 2009.

IV. Possible Amendments to Rule 123

Nancy Swetnam, Director, AOC Certification & Licensing Division, addressed the committee regarding issues facing her Division regarding public record requests. She also expressed concern about certain provisions of current Rule 123. Ms. Swetnam was asked to provide a draft of modifications she would like to see made to the Rule. Jennifer Greene volunteered to work with her on this issue.

Report of Records Retention Workgroup

Donald Jacobson reported on the findings of the Records Retention Workgroup and presented the workgroup’s draft proposal. The committee agreed to adopt the draft language of the workgroup.

Discussion of Possible Amendments to Rule 123

Jennifer Greene informed the committee of a recent amendment to Rule 123 regarding digital recordings of court proceedings. Rule 123 was revised in 2006 to provide that electronic verbatim recordings made by a courtroom clerk or at the direction of the clerk and used in preparing minute entries are closed. Additionally, an original transcript filed with the Clerk of Court is presently made available to the public at the same copy rate per page at which all copies are provided. A member of the public may choose to obtain a copy of the transcript from the court reporter at a lower statutory rate per page. Finally, transcripts should not be made available by remote electronic access due to the sensitive information often contained in them. Therefore,

there is no need to modify Rule 123 further regarding recordings of court proceedings or transcripts.

Mr. Jeanes noted that the remaining proposals listed on the agenda will need to be tabled until the next meeting. Members were asked to review the policy drafts in the interim, and come prepared to discuss them at the next meeting.

V. Call to Public/Adjourn

Chairman, Michael Jeanes, made a call to the public.

No comments were made.

Meeting adjourned at 2:30 p.m.

Next Meeting: Tuesday, September 23, 2008, 10:00am - 2:30pm, Supreme Court Building, 1501 W. Washington, Phoenix, AZ, Conference Room 345 A/B